

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

JAMES C. MARCELLO and
OLIVIA A. MARCELLO

v.

CA 05-004 ML

JOHN A. DESANO, BERNARD P. HEALY,
JOHN LACROSS, ALBERT MASTRIANO,
and ARTHUR T. MARCELLO

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' Objection to a Report and Recommendation issued by United States Magistrate Judge Martin on March 23, 2006. In the Report and Recommendation, Magistrate Judge Martin recommends that Defendants DeSano, Healey, Mastriano, and Arthur Marcello's ("Moving Defendants") Motion to Dismiss pursuant to Fed. R. Civ. P. 12(6)(6) be granted; that Moving Defendants' Motion to Dismiss for Plaintiffs' Failure to Attend Deposition be denied; and that Defendant LaCross' Motion to Dismiss for Plaintiff's Failure to Attend Deposition be granted.

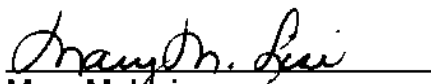
Because the motions seek dispositive relief, this Court is required to "made a *de novo* determination of those portions of the report or specified proposed findings or recommendation to which objection is made." 28 U.S.C. § 636(b)(1). This Court has considered Plaintiffs' objections and finds that none of them has merit. Furthermore, this Court is very familiar with the history of this litigation and Plaintiffs' abusive and obstructive conduct. This Court has reviewed the Amended Complaint filed by Plaintiffs and finds that Magistrate Judge Martin accurately described its many deficiencies.

Accordingly, the Court adopts the recommendation that the Moving Defendants' Motion to Dismiss be granted.

The Court has also considered Plaintiffs' failure to attend deposition and agrees with Magistrate Judge Martin's conclusion that Plaintiffs' failure to attend a properly noticed deposition was "unjustified." Moreover, this Court finds that Plaintiffs' failure to submit to a deposition after having been ordered to do so and warned by the Magistrate Judge constitutes a flagrant and willful defiance of a Court order. The Court, therefore, agrees with Magistrate Judge Martin that a dismissal of the action is appropriate.

For these reasons, this Court adopts the March 23, 2006 Report and Recommendation in its entirety. The Moving Defendants' 12(b)(6) Motion to Dismiss and Defendant LaCross' Second Motion to Dismiss for Failure to Attend Deposition are GRANTED. Moving Defendants' Motion to Dismiss for Failure to Attend Deposition is DENIED as moot.

SO ORDERED:



Mary M. Lisi
United States District Judge
April 7, 2006